

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

PAUL BRUMFIELD,

Plaintiff,

v.

Case No. 2:09-cv-01223

NAOMI ROBERTS, Health  
Services Administrator,  
SUBHASH GAJENDRAGAKAR, Doctor,  
\_\_\_\_\_ OBENZA, Doctor,  
WEXFORD MEDICAL INC.,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

On November 6, 2009, Plaintiff, an inmate who was formerly housed at Mount Olive Correctional Complex, filed a Complaint alleging that he is receiving deliberately indifferent medical care and attention with regard to an abdominal hernia, his sciatic nerve, arthritis in his right knee, and hepatitis C. (Complaint, docket # 2, at 4.) He is now housed at Huttonsville Correctional Center.

In his Complaint, he named four defendants, one of them Dr. Obenza, who is deceased. By Notice and Order entered February 16, 2010, the undersigned instructed Plaintiff on the procedure he must follow in order to pursue his claim against Dr. Obenza. Specifically, the Notice and Order states as follows:

Accordingly, it is hereby **ORDERED** that, if Plaintiff

intends to pursue his claims against Dr. Obenza, he must advise the court of his intention to do so in writing within 10 days of the entry of this Order, and a motion for substitution must be filed within 90 days thereafter.

(Notice and Order, # 20.) Plaintiff has failed to indicate his intention to pursue his claim against the late Dr. Obenza and has failed to file a motion for substitution.

The undersigned proposes that the presiding District Judge **FIND** that Plaintiff has failed to prosecute his claim against the late Dr. Obenza. Therefore, it is respectfully **RECOMMENDED** that the presiding District Judge dismiss Dr. Obenza as a party defendant without prejudice.

The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a

waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to opposing counsel and Judge Johnston.

The Clerk is directed to file this Proposed Findings and Recommendation, to mail a copy of the same to Plaintiff and to transmit it to counsel of record.

June 22, 2010  
Date

Mary E. Stanley  
Mary E. Stanley  
United States Magistrate Judge